



Commonwealth of Kentucky

MASTER AGREEMENT

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: Wireless Equipment and Services	
Doc ID No: MA 758 0700002372 1	Proc Folder: 607216
Procurement Type: Computer Equipment or Software	
Effective Date: 2007-11-16	Expiration Date: 2009-11-15
Not To Exceed Amount	
Administered By: Amy Carol Richardson	Cited Authority: FAP111-57-00-CG
Telephone: 502-564-4510	Issued By: Amy Carol Richardson
VENDOR AT & T Mobility P. O. BOX 6463 CAROL STREAM IL 60197-6463 US	

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Data Plans	0	0.00		0.00000	0.00	0.00

Extended Description

Data Plans

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Pooled Plans	0	0.00		0.00000	0.00	0.00

Extended Description

Pooled Plans

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
3	Stand Alone Plans	0	0.00		0.00000	0.00	0.00

Extended Description

Stand Alone Plans

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
4	Equipment	0	0.00		0.00000	0.00	0.00

Extended Description

Equipment

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
5	TeleNav Track	0	0.00		0.00000	0.00	0.00

Extended Description

TeleNav Track

0700002372	Document Phase Final	CONTRACT FOR Wireless Equipment and Services	Page 2 of 16
------------	-------------------------	--	-----------------

**WIRELESS EQUIPMENT AND SERVICES
BETWEEN
THE COMMONWEALTH OF KENTUCKY
COMMONWEALTH OFFICE OF TECHNOLOGY
AND
AT&T MOBILITY NATIONAL ACCOUNTS LLC**

* * * * *

This Master Agreement (“Contract”) is entered into, by and between the Commonwealth of Kentucky, Commonwealth Office of Technology (“the Commonwealth”), and AT&T Mobility National Accounts LLC, (“AT&T Mobility”) as the Prime Contractor to establish a Contract for Wireless Equipment and Services.

The Commonwealth and Contractor agree to the following:

I. Scope of Master Agreement

This Master Agreement shall provide the Commonwealth Office of Technology (COT) a full-service contract for affordable, portable, consistent, reliable, and secure wireless voice and data communications for all state and local government agencies.

II. Contract Components and Order of Precedence

The Commonwealth’s acceptance of the Contractor’s offer in response to the Solicitation, indicated by the issuance of a Contract Award by the Office of Procurement Services, shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to the Solicitation;
3. The Solicitation and all attachments thereto, including Section 40--Terms and Conditions of a Contract with the Commonwealth of Kentucky;
4. General Conditions contained in 200 KAR 5:021 and Office of Procurement Services’ FAP110-10-00;
5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor’s proposal in response to the Solicitation;
7. The Contractor’s proposal in response to the Solicitation.

	Document Phase	Document Description	Page 4
0700002672 AT&T Mobility shall make available all devices, accessories at twenty percent (20%) discounting. In most cases all devices that require data services receives additional discounting due to current market promotions. Example HTC 8925 current pricing is \$399.00, with data services the device receives an additional \$100.00 discount with the addition of an unlimited data plan. The net cost to the Commonwealth is \$299.00.		Wireless Equipment and Services	216

Disposal of old equipment (Green IT)

AT&T Mobility shall provide return shipping labels upon request for old equipment to be shipped without expense to the Commonwealth through AT&T's ongoing phone recycling and refurbishment programs.

Services

Both parties agree that upon award of this Master Agreement AT&T Mobility shall immediately engage the In Building Solutions Team to evaluate and determine the needed requirements to provide useful service levels within the defined locations.

AT&T Mobility is making available to the Commonwealth the following priority services.

Select Customer Care, which provides an answer time of less than twenty (20) seconds on average. The care representative who answers the call owns the call until resolution is completed.

ETS (Enterprise Technical Support), this is tier 2 to tier 2 technical support available 24 X7.

AT&T Mobility will provide the Commonwealth with a quarterly review on all users upon request to determine if the user plans need to be moved.

Coverage

Service will be available only within the operating range of each Carrier's wireless system in AT&T Markets and where roaming is available through other carriers (each, a "Service Area"). AT&T may from time to time add or delete Service Areas upon notice to Customer. Gaps in Service occur within the Service Areas shown on coverage maps, which by their nature, are only approximations of actual coverage; therefore, AT&T does not guarantee Customer uninterrupted Service. Service is subject to: (a) transmission limitations caused by atmospheric

and other conditions, availability of radio frequency channels, reduction in transmission speed, or interruption caused by Customer's Equipment, terrain obstructions such as trees or buildings, or other conditions; (b) temporary suspension due to governmental regulations or orders, systems capacity limitations, priority access by National Security and Emergency Preparedness personnel in the event of a disaster or emergency, coordination with other systems, system repairs or modifications, problems with the facilities of interconnecting carriers, or in response to suspected fraud, abuse, misuse of the network, hacking or malicious viruses; (c) interruption for Customer's nonpayment of charges; and (d) blocking certain categories of numbers (e.g., 976, 900 and certain international destinations) or certain websites in, in AT&T's sole discretion, AT&T is experiencing excessive billing, collection, fraud problems or other misuse of AT&T's wireless network.	Document Title: Wireless Equipment and Services	Page 5
--	---	--------

obstructions such as trees or buildings, or other conditions; (b) temporary suspension due to governmental regulations or orders, systems capacity limitations, priority access by National Security and Emergency Preparedness personnel in the event of a disaster or emergency, coordination with other systems, system repairs or modifications, problems with the facilities of interconnecting carriers, or in response to suspected fraud, abuse, misuse of the network, hacking or malicious viruses; (c) interruption for Customer's nonpayment of charges; and (d) blocking certain categories of numbers (e.g., 976, 900 and certain international destinations) or certain websites in, in AT&T's sole discretion, AT&T is experiencing excessive billing, collection, fraud problems or other misuse of AT&T's wireless network.

AT&T shall provide the professional services group to help develop the interface between the FrontRange application and the BES MDS server.

RIM has agreed to provide the Commonwealth of Kentucky with 200 Blackberry CALS at no charge. This is a one-time commitment.

AT&T shall make available to the Commonwealth as new build out plans and new construction sites are released.

IV. Terms and Conditions

Section 40.000—Final Agreement

This Contract represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

Section 40.010—Agencies to Be Served

This contract shall be for use by the following agencies of the Commonwealth of Kentucky:

All State Agencies

No shipments shall be made except upon receipt by Vendor of an official Delivery Order from a using agency.

Section 40.020—Extending the Contract Use to Other Agencies

	Document Phase	Document Description	Page 6
700002302	Final	Wireless Equipment and Services	one

The Office of Procurement Services reserves the right, with the consent of the Vendor, to offer this Master Agreement to other state agencies requiring the product or service.

Section 40.030—Contract Provisions

If any provision of this Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Commonwealth and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

Section 40.040—Type of Contract

This contract shall be on the basis of a **firm fixed unit price**.

Section 40.050—Term of Contract and Renewal Options

The initial term of the Contract shall be for a period of **two (2) years** from the effective date of the Award of Contract.

This Contract may be renewed at the completion of the initial Contract period for **three (3) additional one (1) year periods**, upon the mutual agreement of the Parties. Such mutual agreement shall take the form of an addendum to the Contract under Section 40.070—Changes and Modifications to the Contract.

The Commonwealth reserves the right not to exercise any or all renewal options. The Commonwealth reserves the right to extend the contract for a period less than the length of the above-referenced renewal period if such an extension is determined by the Commonwealth Buyer to be in the best interest of the Commonwealth.

Section 40.060—Multiyear Contracts

If this Contract is for a term that extends beyond the end of the biennium in which the Contract was made, payment and performance obligations for succeeding fiscal years are subject to the availability of funds. Therefore, when funds are not appropriated or otherwise made available to support continuation of performance of the Contract beyond the biennium, the Contract for such subsequent year(s) may be canceled and the Contractor shall be reimbursed in accordance with Section 40.260—Provisions for Termination of the Contract.

Section 40.070—Changes and Modifications to the Contract			Page 7
0700002372	Final	Wireless Equipment and Services	of 16

Pursuant to KRS 45A.210(1) and 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the Contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Contractor finds at any time that existing conditions made modification of the Contract necessary, it shall promptly report such matters to the Commonwealth Buyer for consideration and decision.

Section 40.080—Changes in Scope

The Commonwealth may, at any time by written order, make changes within the general scope of the Contract. No changes in scope are to be conducted except at the approval of the Commonwealth through the process described in Section 40.070—Changes and Modifications to the Contract.

Section 40.090—Contract Conformance

If the Commonwealth Buyer determines that deliverables due under this Contract are not in conformance with the terms and conditions of the Contract and the mutually agreed-upon project plan, the Buyer may request the Contractor to deliver assurances in the form of additional Contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor.

Section 40.100—Assignment

The Contractor shall not assign the Contract in whole or in part or any payment arising there from without the prior written consent of the Commonwealth Buyer. Any purported assignment is void.

Section 40.110—Notices

After the Award of Contract, all programmatic communications with regard to day-to-day performance under the contract are to be made to the Agency technical contact(s)

identified below: 0700002372	Document Phase Final	Document Description Wireless Equipment and Services	Page 8 of 16
-------------------------------------	------------------------------------	--	-----------------------------------

Jim Barnhart, Executive Director
Office of Infrastructure Services
101 Cold Harbor Drive
Frankfort, KY 40601
502-564-7777
Jim.Barnhart@ky.gov

After the Award of Contract, all communications of a contractual or legal nature are to be made to the Commonwealth Buyer.

Amy Monroe Richardson, CPPB
COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET
Office of Material and Procurement Services
New Capitol Annex
702 CAPITOL AVE RM 373
FRANKFORT KY 40601
(502) 564-4510 ext. 270
Fax: (502) 696-5194
Amy.Richardson@ky.gov

Section 40.120—Payment

The Commonwealth will make payment within thirty (30) working days of receipt of Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the Agency Contact Person or his representative. Any questions regarding payment must be submitted to the Commonwealth Buyer.

Section 40.130—Contractor Cooperation in Related Efforts

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any

other contractor or by Commonwealth employee	Document Description	Page 9
0700002372	Final Wireless Equipment and Services	of 16

Section 40.140—Subcontractors

The Contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The Contractor shall be **solely responsible** for performance of the entire Contract whether or not subcontractors are used. The Commonwealth shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor.

All references to the Contractor shall be construed to encompass both the Contractor and any subcontractors of the Contractor.

Section 40.150—Contractor Affiliation

"Affiliate" shall mean a branch, division, or subsidiary that is effectively controlled by another party. If any affiliate of the Contractor shall take any action that, if done by the Contractor, would constitute a breach of this agreement, the same shall be deemed a breach by such party with like legal effect.

Section 40.160—Commonwealth Property

The Contractor shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for Contractor's use in connections with the performance of this Contract. The Contractor shall reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.

Section 40.170—Insurance

The Contractor shall provide professional liability insurance for its professional employees, public liability, property damage, and workers' compensation insurance, insuring, as they may appear, the interest of all parties of agreement against any and all claims, which may arise out of the Contractor's operations under the terms of this Contract. In the event any carrier of such insurance exercises cancellation, notice of such cancellation shall be made immediately to the Commonwealth Buyer.

Section 40.180—Confidentiality of Contract Terms

The Contractor and the Commonwealth agree that all information communicated between them before the effective date of the Contract shall be received in strict confidence and shall not be necessarily disclosed by the receiving party, its agents, or

employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and Federal public information disclosure laws.	Document Case	Document Description	Page
0000271	Confidential	Wireless Equipment and Services	10 of 10

Upon signing of the Contract by all Parties, terms of the Contract become available to the public, pursuant to the provisions of the Kentucky Revised Statutes.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

Section 40.190—Confidential Information

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees to that effect, provided however, that the foregoing will not apply to:

- Information, which the Commonwealth has released in writing from being maintained in confidence.
- Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected. or
- Information, which, after disclosure, becomes part of the public domain as defined above, thorough no act of the Contractor.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

Section 40.200—Advertising Award

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

Section 40.210— Patent or Copyright Infringement

The Contractor shall report to the Commonwealth promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the

performance of this Contract of which the Contractor has knowledge.	Document Phase	Contract Description	Page
0700002372	Final	Wireless Equipment and Services	11 of 16

The Commonwealth agrees to notify the Contractor promptly, in writing, of any such claim, suit or proceeding, and at the Contractor's expense give the Contractor proper and full information needed to settle and/or defend any such claim, suit, or proceeding.

If, in the Contractor's opinion, the equipment, materials, or information mentioned in the paragraphs above is likely to or does become the subject of a claim or infringement of a United States patent or copyright, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Commonwealth's written consent, substitute other equally suitable equipment, materials, and information, or at the Contractor's options and expense, obtain the right for the Commonwealth to continue the use of such equipment, materials, and information.

The Commonwealth agrees that the Contractor has the right to defend, or at its option, to settle and the Contractor agrees to defend at its own expense, or at its option to settle, any claim, suit or proceeding brought against the Commonwealth on the issue of infringement of any United States patent or copyright or any product, or any part thereof, supplied by the Contractor to the Commonwealth under this agreement. The Contractor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by the Contractor.

If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Contractor without the Contractor's written consent.

The Contractor shall have no liability for any infringement based upon:

- the combination of such product or part with any other product or part not furnished to the Commonwealth by the Contractor
- the modification of such product or part unless such modification was made by the Contractor
- the use of such product or part in a manner for which it was not designed

Section 40.220 – Limitation on Liability

Circumstances may arise where, because of default on Vendor's part or other liability, the Commonwealth is entitled to recover damages from Vendor. In each such instance, regardless of the basis on which the Commonwealth is entitled to claim damages from Vendor (including breach, negligence, misrepresentation, or other Contract or tort

claim), Vendor is liable for no more than:	Document Phase:	Document Description	Page
0700002372	Final	Wireless Equipment and Services	12 of 16

- damages for violation or infringement of any copyright or trademark;
- damages for bodily injury (including death) to persons and damages for physical injury to tangible personal property or real property; and
- the amount of any other actual direct damages up to the greater of \$500,000, or three times the value of the Product or Service that is the subject of the claim, up to a maximum of \$25,000,000, unless a court of competent jurisdiction deems this provision to be an unconstitutional indemnification or assumption of the legal risk of another party by the Commonwealth. For example, if the Product or Service that is the subject of the claim were valued at \$15,000,000, Vendor would be liable for no more than \$25,000,000.

In no event will the measure of damages payable by Vendor include, nor will Vendor be liable for, any amounts for loss of income, profit or savings or indirect, incidental, consequential, exemplary, punitive or special damages of any party, including third parties, unless a court of competent jurisdiction deems this provision to be an unconstitutional indemnification or assumption of the legal risk of another party by the Commonwealth.

Section 40.230—Permits, Licenses, Taxes and Commonwealth Registration

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Contract is performed.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. However, the Contractor need not be registered as a prerequisite for responding to the RFP. Additional local registration or license may be required.

The Contractor shall pay any sales, use, and personal property taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

Section 40.240—Contract Claims

The Parties acknowledge that KRS 45A.225 to 45A.290 governs contract claims.

Section 40.250—Rights and Remedies

	Document Phase	Document Description	Page
70000272	Final	Wireless Equipment and Services	35 of 16

The rights and remedies of the Commonwealth provided in Section 40.260 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

Section 40.260—Provisions for Termination of the Contract

This Contract shall be subject to the termination provisions set forth in 200 KAR 5:312.

Section 40.270—Bankruptcy

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee (a) promptly cures all defaults under this Contract. (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

Section 40.280—Conformance with Commonwealth & Federal Laws/Regulations

This Contract is subject to the laws of the Commonwealth of Kentucky and where applicable Federal law. Any litigation with respect to this Contract shall be brought in state or federal court in **Franklin County, Kentucky**.

Section 40.290—Attorneys' Fees

In the event that either Party deems it necessary to take legal action to enforce any provision of the Contract, and in the event the Commonwealth prevails, the Contractor agrees to pay all expenses of such action, including attorneys' fees and costs at all stages of litigation as set by the court or hearing officer.

Section 40.300—Recycling

The Contractor is required to comply with the recycling requirements of 200 KAR 5:330.

Section 40.310—Accessibility

Vendor hereby warrants that the products or services to be provided under this Contract comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title

36, Code of Federal Regulations, part 1193, to the extent the Vendor's products or services may be covered by that act. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services, which is brought to its attention.	Regulations, part 1193, to the extent the Vendor's products or services may be covered by that act. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services, which is brought to its attention.	Vendor Description	Page
17000132	Final	Wireless Equipment and Services	14 of 16

0700002372	Document Phase Final	Document Description Wireless Equipment and Services	Page 15 of 16
------------	--------------------------------	--	--------------------------------

V. Approvals

This Contract is subject to the terms and conditions as stated. By affixing their signatures below, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of this agreement.

1st Party: AT&T Mobility National Accounts LLC as Contracting Agent

Printed name

Title

Signature

Date

2nd Party: Finance and Administration, Commonwealth Office of Technology

Mark Rutledge

Printed name

Commissioner

Title

Signature

Date

Approved by the Finance and Administration Cabinet Office of Procurement Services

Fran Pinkston

Printed name

Executive Director

Title

Signature	Document Phase	Date	Document Description	Page
0700002372	Final		Wireless Equipment and Services	16 of 16